IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 18496 of 2005
Date of Decision: 10.11.2006

Sharanjit Singh. ... Petitioner

Versus

State of Punjab and another. .. Respondents

CORAM : Hon'ble Mr. Justice J.S. Khehar,
Hon'ble Mr. Justice S.D. Anand.

Present : Mr. Rajesh Punj, Advocate,
for the petitioner.

Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for the respondents.

J.S. Khehar, J. (Oral)

The petitioner was placed under suspension by an order dated 13.06.2005. Subsequently by an order dated 27.09.2005, his order of suspension was revoked, and, he was reinstated into the service. A perusal of the order of reinstatement reveals, that the issues canvassed by the petitioner would be considered during the course of a regular departmental enquiry pending against him. Despite the aforesaid assurance given to the petitioner, that a regular departmental enquiry would be conducted against him, wherein he would be afforded an opportunity of hearing, before any adverse order was passed, through the impugned order dated 22.11.2005, the services of the petitioner were terminated with immediate effect without following the assured procedure. It is the instant action at the hands of the authorities, that is subject matter of challenge through the instant writ petition.

In the joint written statement filed by the respondents, it is inter-alia stated as follows in the preliminary submissions:

"1. That petitioner was enrolled as volunteer for performing

`selfless service' under Punjab Home Guards Act, 1947, Rules & Compendium of Instructions on Home Guards issued by Govt. of India, vide Annexure R-1, R-II & R-III respectively enclosed herewith. He was not daily wager/work-charged/temporary/adhoc/regular employee but only a volunteer member. In column 13 and 17 of the enrollment form enclosed with Annexure R-II the members admit the condition that as a member of the Punjab Home Guards to which they had volunteered after duly understanding the responsibilities and duties which its membership impose upon them. During the period of duty, they are paid Rs.150/- daily Subsistence allowance whenever so deployed for the purpose. They are not regular employees of this Department and their services are on voluntary basis only. Thus, the petitioner has no locus standi to file the present writ petition, which is liable to be dismissed with costs.

2. That the petitioner was enrolled as volunteer in Punjab Home Guards Organisation at Patiala on 19.8.1988. As per Govt. instructions, Annexure R-IV, a volunteer who remains absent from duty without leave / permission / information is liable to be called off from duty. The petitioner remained absent from duty from 13.6.03 to 10.8.03 without taking any leave / permission. He concocted the story of his illness. The factual position regarding his absence from duty is that a case was registered against him vide FIR No. 404 dated 14.11.02 for forgery and probably to avoid arrest, he absented himself. The

petitioner was unauthorisedly taken on duty on 21.10.03 by Shri Daljit Singh Grewal, the then District Commander, Patiala by flouting Govt. instructions dated 17.2.98, Annexure R-IV. Vide these instructions, any volunteer who absents himself from duty continuously for a stretch of 6 six days is liable to be called off from duty. Thus, the petitioner was unauthorisedly taken on duty by Shri D.S. Grewal and for this irregularity, a show cause notice has been issued to him for having unauthorisedly taken a number of volunteers on duty, including the petitioner and having put the State exchequer to loss.

3. That the concept of the Home Guards Organization from the very inception is of voluntary nature. The Home Guards organization exits in every State of India and its volunteers are called out for various duties to assist the police and para military forces and are paid daily Subsistence allowance for the call out period. The government employees, semi Government employees or the industrial workers though paid their salaries / wages by their respective department / Corporations and Factories, can join the Home Guards organization as volunteers and are paid Subsistence allowance for the call out period hence, cannot be equated with the regular appointed employees.

4. The petitioner seems to be acting on behalf of Shri Daljit Singh Grewal, the then District Commander Patiala (now at Ropar) because he is pleading the non-existing cause of Shri Daljit Singh Grewal throughout his writ, whereas, the issue of transfer of Shri Grewal has already been settled by this Hon'ble

> Court vide order dated 15.9.05 in Civil Writ Petition No. 9600 and whereas Civil Writ Petition No. 9691 of 2005 has been "Dismissed as withdrawn". Most of the documents enclosed with this writ petition, belong to Sh. D.S. Grewal, and are not relevant with the case of the petitioner. Instead of pleading his cause, the petitioner has given pleas of various petitions filed by Sh. D.S. Grewal. The writ petition may kindly be dismissed on this ground only."

It is, therefore, the vehement contention of the learned counsel for the respondents, that the petitioner being a volunteer, had no vested civil rights and as such, it was not imperative for the authorities to hold a regular departmental enquiry before terminating his services. Learned counsel for the respondents has also relied upon a decision rendered by this Court in Ramesh Chander and others versus State of Punjab and others (CWP No. 5142 of 2005 decided on 11.9.2006), in which, while dealing with a similar claim raised at the hands of a volunteer Home Guard this Court relied on the judgment rendered by the Apex court in State of Gujarat and another versus Akshay Amrutlal Thakkar, 2006, SCC (L&S) 290, wherein the Apex Court observed as under:-

> "Guidelines 4 and 5 are relevant for the purpose of this case. Guideline 5 makes it clear that only a person who rendered services for a particular period as Taluka Home Guards Officer is eligible for appointment as District Commandant. The post or district Commandant is an honorary post. However, it is equivalent to a Gazetted Officer, Class I and the appointment is to be made by a Selection Committee consisting of the

designated officers. It is found that in terms of guideline 4, an undertaking is given that the person selected is not to be a member of any political party and shall not be led by any communal institute and political party and nor shall he involve in any political or communal activities. As the authorities found that the respondents were in fact acting at variance with the undertaking given, their disengagement was felt necessary. View taken in the impugned judgments, therefore, cannot be maintained and the impugned judgments are set aside. The view expressed by the Division Bench of the High Court in Lataben Ramniklal Shah V. State of Gujarat taking the contrary view is the correct one.

As rightly contended by learned counsel for the appellant State, the order impugned in the writ petition was one of disengagement because the respondents did not act in the terms of the undertaking given. As the services rendered by the respondents were essentially honorary, no civil consequences were involved. Section 6-B(1-A) empowers the Commandant to discharge any member of the Home Guards at any time if, in the opinion of the Commandant, the services of such members are no longer required. The provision does not necessarily refer to the discharge of a member from the Home Guards. The respondents in the instant case were not sought to be discharged as members of the Home Guards. Under the notification in question, the discharge was from duties as District Commandant, Home Guards."

This Court recorded the following conclusions while dealing with the issues raised in Ramesh Chander's case (supra):-

> "In view of the position expressed by the Supreme Court in the judgment extracted above, namely, that persons engaged in an honorary capacity have no civil rights, and that, no formalities need to be complied with before terminating their services, we are of the view, that the petitioners are similarly situated as the respondents in the judgment extracted above. Volunteers are obviously persons engaged in an honorary capacity. In the aforesaid view of the matter, it is apparent that the petitioners cannot be deemed to be enjoying any civil rights, and as such, the termination of their services on account of the allegations levelled against them, cannot be considered to be in violation of law."

We are satisfied that the instant controversy is squarely covered by the decision rendered in Ramesh Chander's case (supra), as the petitioner therein was also a volunteer Home Guard. Following the aforesaid decision, we have no alternative but to conclude that it was not imperative for the authorities to hold any regular departmental enquiry, before terminating the services of the petitioner who was a volunteer Home Guard, as a volunteer Home Guard has no vested civil rights.

Dismissed.

(J.S. Khehar)
Judge

November 10, 2006 (S.D. Anand)
vkd Judge